



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Western Filter Corporation

File: B-247212

Date: May 11, 1992

Harvey B. Merade for the protester,
Ronald M. Pettit, Esq., Defense Logistics Agency, for the
agency,
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency properly canceled small business-small purchase set-aside and completed the purchase on an unrestricted basis, where the only quotation submitted by a small business exceeded both the government estimate and a large business "courtesy" offer by approximately 20 percent.

DECISION

Western Filter Corporation protests the award of a purchase order to Textron Filtration Systems under request for quotations (RFQ) No. DLA750-91-Q-6155, issued as a small business set-aside under small purchase procedures by the Defense Logistics Agency (DLA), for the provision of 610 fluid filter elements. Western Filter argues that DLA improperly dissolved the small business set-aside and awarded the contract to a large business.

We deny the protest.

The record reflects that the agency received three quotations in response to the RFQ, which was issued under the small business-small purchase set-aside procedures of Federal Acquisition Regulation (FAR) § 13.105. Textron, a large business, was the low offeror at \$12.24 per unit; Western Filter, a small business, was next low at \$14.50 per unit; and another large business followed at \$18 per unit. The government's estimated fair market price was \$12.23 per unit.

DLA determined to award the contract to Textron under FAR § 13.105(d)(3), which authorizes the cancellation of a small business-small purchase set-aside and the completion of the purchase on an unrestricted basis if the agency does not

receive a reasonable quotation from a small business, DLA states that it decided to cancel the set-aside because the protester's price significantly exceeded the government's estimated fair market price, the awardee's price, and the prices received in prior procurements for the same item. The cognizant small business specialist agreed that the protester's price was unreasonable and that cancellation of the set-aside was appropriate. Western Filter protests the agency's determination as to the reasonableness of its price.

The contracting officer has discretion to determine price reasonableness in a small business or other set-aside, and we will not disturb such a determination unless it is unreasonable. Sletager, Inc., B-240789.6, Oct. 11, 1991, 91-2 CPD ¶ 328. In making such a determination, the contracting officer may consider such factors as the government's estimate, the procurement history for the solicited supplies or services, the current market climate, and the "courtesy bid" of an otherwise ineligible large business. See FAR § 13.106(c)(1); Cottrell Eng'g Corp., B-242973, May 21, 1991, 91-1 CPD ¶ 498. Our Office has upheld the agency's determination to cancel a small business set-aside where the lowest eligible small business price exceeded the basis for comparison by as little as 7.2 percent, Building Maint. Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233; see also L. White Constr. Co./Ansley-Sheppard-Burgess Co., B-245916, Feb. 3, 1992, 92-1 CPD ¶ 138; North Am. Signal Co., B-190972, May 19, 1978, 78-1 CPD ¶ 387; Saratoga Indus.--Recon., B-202698.2, Jan. 22, 1982, 82-1 CPD ¶ 47 (agency properly found small business price unreasonable, where it exceeded the government estimate or large business price by 15 percent, 16 percent, and 9.6 percent, respectively).

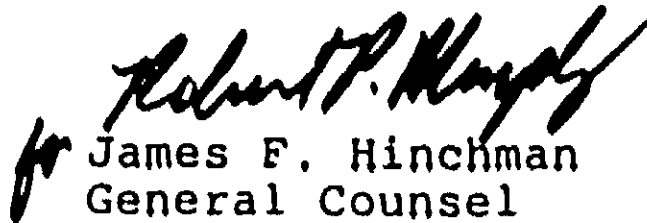
Western Filter's quotation exceeded both the government's estimated fair market price and Textron's virtually identical "courtesy" quotation by approximately 19 percent. This differential reasonably supports the cancellation of the set-aside, provided that the record does not otherwise cast doubt upon the agency's determination. L. White Constr. Co./Ansley-Sheppard-Burgess Co., supra.

Here, the protester does not assail the government's estimate as unreasonably low or otherwise inaccurate. Indeed, Textron's "courtesy" quote essentially matches the government's estimate and corroborates its validity as an index of fair market price. In addition, the quotes received in prior procurements are even lower than the current government estimate. Because the record does not suggest that the agency misplaced its reliance on its own estimate or Textron's "courtesy" offer, the agency could properly find the protester's price unreasonable,

notwithstanding that another offeror's price was even higher.

While Western Filter contends that the agency should have requested it to submit a best and final offer, the agency had no obligation to do so under small purchase procedures since the protester should have initially submitted its best quote. Twigg Aerospace Components, B-236332, Nov. 21, 1989, 89-2 CPD ¶ 485.

The protest is denied.


for James F. Hinchman
General Counsel